



MULTISTATE TAX COMMISSION

Maximizing the synergies of multi-state tax cooperation

To: MTC Uniformity Committee, Sales and Use Tax Subcommittee

From: Sheldon H. Laskin, Counsel

Date: July 12, 2013

Subject: Survey of State Law Regarding Tax Class Action Refund Claims Against Sellers for Overcollection of Transaction Tax & False Claims Act Actions for Undercollection of Tax

The purpose of this memo is to respond to the Committee's request at its March meeting that staff summarize the current state of the law regarding class action refund claims against third parties for overcollection of tax and the use of state false claims acts (FCAs) to redress alleged undercollection of required taxes.

Class actions are essentially a creation of the common law, although there are various statutory and court-created limitations on their use. In general – subject to several exceptions – the courts have limited an individual's right to file a tax refund action against the revenue department, whether the action is filed as an individual claim for refund or as a class action. For the most part, courts have recognized that refund claims against the revenue department are allowed only to the extent that the state has waived its sovereign immunity from suit and therefore have ruled that actions for a refund must be consistent with state laws governing such claims.

The law governing class action refund claims against *third parties* for overcollection of tax is less certain. In the absence of a clear statutory prohibition of such actions, some courts have allowed them under certain circumstances. For example, where the underlying tax has previously been ruled to be illegal, the individual amounts in controversy are so small that it is unlikely individual refund claims would be filed, the class representative has himself filed a refund claim and there is a common fund out of which the refunds can be paid, some courts have shown a willingness to allow these actions to proceed.

Currently, 29 states plus the District of Columbia, New York City, Chicago, and Allegheny County, PA., have adopted state or municipal-level FCAs with *qui tam* provisions.¹

¹ The 29 states are: California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Washington and

Of those state and local governments, only California, Hawaii, Massachusetts, Montana, New Mexico, North Carolina, Tennessee, Virginia, the District of Columbia, and New York City have a tax bar that excludes tax cases from *qui tam* actions.² Those without a tax bar include Delaware, Florida, Nevada, New Hampshire, New Jersey, and New York.³ Illinois, Indiana, and Rhode Island have partial tax bars, disallowing *qui tam* actions only for income tax claims.⁴

The following is a representative list of state court tax refund class actions filed by purchasers against sellers for wrongful collection of state sales and use taxes, or other transaction taxes. In addition, perhaps the two most prominent state FCA cases that allege improper failure to collect transaction tax are included on the list.⁵⁶

- *Ackerman et al v. International Business Machine v. Iowa Department of Revenue*, 337 N.W.2d 486, CCH-STATE-CASE-HIGH-CT, IA-TAXRPTR, ¶00019, (Iowa Supreme Court, August 17, 1983). Plaintiff filed a class action on the grounds that IBM illegally charged \$20.42 Iowa sales tax on two machine service agreements in violation of law and contrary to contract provisions. Appellate court sustained trial court's decision to dismiss.
- *Allen v. AT&T*, Case No. CJ-99-2168, (Muskogee County District Court, Oklahoma, May 31, 2002). Lead plaintiffs, Bobby Gene Allen and Deborah Jane Allen, filed a class action lawsuit alleging their long-distance telephone provider, AT&T, improperly charged the 3.25% Muskogee city sales tax despite the fact they lived outside the city limits of Muskogee. AT&T acknowledged that the "Outside City Limits" indicator was improperly set for some customers and that AT&T was trying to correct the problem. Plaintiffs brought suit on behalf of all AT&T customers in Oklahoma and 27 other states that have local sales taxes. AT&T protested the definition of the class to include customers in other states on the grounds that Oklahoma courts should not make tax determinations for other states and other grounds. Trial court judge did certify the class to include Oklahoma and the 27 other states.
 - Court of Civil Appeals of Oklahoma, Second Division, Case No. 97,916, (June 10, 2003) sustained the trial court's certification of the class.

Wisconsin. *Qui tam* is a Latin phrase that in modern parlance means "private attorney general" or an individual filing an action on behalf of the state which alleges wrong committed against the state.

² Calif. Gov't Code sections 12650-56; D.C. Code section 2-308.14(d)(3); Hawaii Rev. Stat. section 661-21(f); Mass. Gen. Laws ch. 12, section 5B(12); MCA 17-8-403(5); N.M. Stat. section 44-9-3(E); N.Y.C. Admin. Code section 7-804(d); N.C. Gen. Stat. section 1-607(c); Tenn. Code section 4-18-103(f); Va. CodeAnn. Section 8.01-216.3(D).

³ Del. Code sections 1201, et seq.; Fla. Stat. section 68.081, et seq.; Nev. Rev. Stat. sections 357.010, et seq.; N.H. Rev. Stat. section 167:61-b; N.J. Stat. sections 2A:32C-1, et seq.; N.Y. State Fin. Law sections 187-194.

⁴ 740 Ill. Comp. Stat. 175/3(c); Ind. Code section 5-11-5.5-2(a); R.I. Gen. Laws section 9-1.1-3(d)

⁵ Those FCA cases are *Illinois ex rel. Beeler, Schad & Diamond v. Ritz Camera Centers, Inc.*, 878 N.E.2d 1152 (Ill. App. Ct. 2007) and *People ex. Rel. Empire State Ventures, LLC v. Sprint Nextel Corp.*, Index No. 103917-2011 (N.Y. Sup. Ct.). Note that in both cases, the action was originally filed as a private *qui tam* action but that the state ultimately intervened to prosecute the action itself.

⁶ Staff has extensively relied on the following documents in preparing this memo. Will Yancey, *Class Action Litigation*, <http://www.willyancey.com/tax-class-action.html>, Trachtenberg, Friedman & Tresh, *Applying False Claims Acts in State Taxation*, State Tax Notes (May 7, 2012), 373 – 377, *Judge Denies Sprint's Motion to Dismiss False Claims Act Case Based on Alleged Tax Fraud in New York*, Greene LLP (July 2, 2013), <http://falseclaimsattorney.com/2013/07/judge-denies-sprints-motion-dismiss-false-claim>. Staff has revised these materials where necessary to bring them up to date.

- Supreme Court of Oklahoma (September 29, 2003) declined to review the case.
 - US Supreme Court, Docket No. 03-1046, (April 26, 2004) denied petition for a writ of certiorari.
 - Amicus brief filed by Multistate Tax Commission in support of AT&T.
 - News story on settlement in "Class Action Settlement No Victory for Corporations: More Multi-State Collection Cases Could Follow" 3(5) *Sales & Use Tax Monitor* 1 (March 15, 2005).
- *Arkansas Department of Revenue v. Staton*, No. 96-215, (Arkansas Supreme Court, October 28, 1996). Consumer class action lawsuit asserted sales tax was illegally collected on the sale of extended warranty service contracts for motor vehicles. The state supreme court agreed that the extended warranty service contracts were not taxable. However, the Supreme Court denied certification of the class.
- *Atwood v. City of Palo Alto*, Case Number 1-06-CV-057086 (Santa Clara County Superior Court, filed January 30, 2006). Taxpayer class action claims the city illegally and erroneously collected money from residents (about \$10-\$27 million) via a tax on nationwide services offered by cellular companies.
- *Bergmoser v. Smart Document Solutions, LLC*, (U.S. Court of Appeals for the Sixth Circuit, No. 07-3357, March 5, 2008). The U.S. Court of Appeals upheld dismissal of a class action lawsuit seeking refund of tax said to be overpaid because the sole remedy to claim a refund is a refund claim filed with the Tax Commissioner and not a private action against the vendor.
- *Burgess v. Gallery Model Homes, Inc. et al*, No. 01-01-01014-CV, 101 S.W.3d 550, 2003 Tex. App. LEXIS 750, (Texas Court of Appeals, First District, January 23, 2003). Taxpayer filed class action lawsuit alleging retailers improperly collected local metropolitan transit authority (MTA) tax on deliveries to customers outside the MTA area. Appeals court dismissed the suit because the taxpayer had not exhausted administrative remedies with state Comptroller.
- *Butcher v. Ameritech Corporation*, No. 2005AP2355, CCH STATE-CASE-APP-CT, STATE-ARD, ¶ 400-960, (Wisconsin Court of Appeals, District IV, December 21, 2006). In a class action case customers of a phone company sought the return of millions of dollars that the phone company charged and collected in unauthorized Wisconsin sales and use taxes. Appellate court upheld the lower court's dismissal of the complaint was based upon the voluntary payment doctrine. Because the customers did not challenge the unauthorized tax either before voluntarily making payment, or at the time of voluntarily making payment, they could not seek a return of their payment after the fact. Although the phone company's bill did not inform their customers regarding which services it was collecting sales tax on, the court held that it was the customers' duty to make an inquiry of the phone company regarding which services were being taxed prior to making their payments. The customers' argument that the mistake of fact exception should apply to the voluntary payment doctrine in this case failed because "every person is presumed to know the law and that is why a mistake of law is not an exception to the voluntary payment doctrine."
- *California Nurseries and Garden Centers* (Los Angeles County, 2002). Class action lawsuit was filed in Los Angeles County against several nurseries/garden centers alleging the unlawful charging of sales tax on fertilizer.

- *City of Somerset v. Bell et al*, No. 2003-CA-001522-MR, (Kentucky Court of Appeals, January 12, 2005). Court certified class action for ad valorem property tax refund. Subsequently the Kentucky Legislature amended tax refund statutes to prevent class actions for this type of tax refund (Kentucky Laws 2005, Ch. 112 (H.B. 498)).
- *City of Springfield v. Sprint Spectrum*, No. SC87238; *City of St. Louis v. Sprint Spectrum*, No. SC87400, (Supreme Court of Missouri en banc, August 8, 2006). Court held the cities' gross receipts business license tax on wireless service did not meet the statutory requirements.
 - *City of University City et al v. AT&T Wireless et al.*, Case No. 01CC-004454, (St Louis County (Missouri) Circuit Court Division 10, original petition filed January 8, 2002). Plaintiff class action by 22 Missouri cities against 18 wireless companies doing business in Missouri. Plaintiffs are seeking to collect local business or occupation license taxes based on gross receipts for wireless services. Plaintiffs sought declaratory and injunctive relief and an accounting.
 - In 2005, Missouri enacted HB 209 to limit class actions by cities regarding business taxes against telecommunications companies.
- *Clark et al. v. Bellsouth Telecommunications, Inc.*, No. 3:04-CV-735H (W.D. Kentucky, May 28, 2007). Class action against BellSouth for overcollecting sales tax on DSL high speed Internet access. From the beginning, BellSouth collected a 6% Kentucky sales tax from its customers. Although initially the Revenue Department allowed the collection of sales tax, the Department later prohibited its collection. Customers of BellSouth sued BellSouth for collecting sales tax for the period before it sought permission from the Revenue Department, and asserted that the Internet Tax Freedom Act and Kentucky law clearly prohibited imposing a tax on Internet services, including DSL. Settlement reached in 2007.
- *Dell, Inc. v. Supr. Ct. of the City and County of San Francisco*, 71 Cal. Rptr. 3d 905 (Cal Ct. App. 2008). Consumer class action alleging Dell improperly collected sales tax on optional service contracts. Appellate court decided in favor of consumers and remanded to trial court to determine amounts.
- *Feeney et al. v. Dell Inc.*, 2008 WL 1799954 (Mass. Super. April 4, 2008). Consumer class action alleging Dell improperly collected sales tax on optional service contracts. Arbitrator held even if tax was improperly collected, that error was in good faith. Appellate court sustained the arbitrator's decision.
- *Flippo v. L. L. Bean, Inc. et al.*, 898 A.2d 942 (Maine 2006). Consumer class action alleging sales tax improperly collected when consumer applied retailer's coupon to reduce price of goods. Court held L. L. Bean properly charged sales tax on the value of the coupons.
- *FMS, Inc. v. Dell Computer Corporation*, King County (Washington) Superior Court No. 03-2-23781-7SEA, (complaint filed April 23, 2003). Plaintiff consumer class action alleged defendant improperly collected sales tax from consumers on the purchase of optional extended warranty service contracts. Seeks a refund of the tax, treble damages, and attorney's fees.
- *Food Lion*, (Tennessee state court, 2002). Food Lion settled a class action filed by a consumer group by offering 28-cent coupons to customers who held an MVP discount card between 1995 and 1998. The plaintiff class alleged that Food Lion charged too much

sales tax on discounted products purchased with the discount card. ("Attention Shoppers: Food Lion Rebate Due" *Greensboro News & Record*, Feb. 25, 2002.)

- *General Motors Acceptance Corporation (GMAC) v. City of Red Bay*, 894 So.2d 650, Alabama Supreme Court Docket No. 1020294, (Alabama Supreme Court, June 25, 2004). City of Red Bay and Franklin County filed a class action suit alleging GMAC failed to collect and remit local sales taxes on its vehicle leases. Trial court certified the class in 2001. Alabama Supreme Court found that the city and county failed to follow the procedures and provide for taxpayer appeals as required under the Alabama Taxpayers' Bill of Rights. Supreme Court ordered trial court to vacate the class certification order.
- *General Motors Acceptance Corporation (GMAC) v. DuBose*, Alabama Supreme Court Docket No. 1001060, 834 So.2d 67, (Alabama Supreme Court, revised May 3, 2002). Plaintiff consumer class action alleged defendant over collected Alabama rental tax on vehicle lease agreements. Court held that class certification was not proper.
- *Getto v. City of Chicago*, 86 Ill. 2d 39, 426 N.E. 2d 844 (Illinois Supreme Court, 1981). Class action claimed Illinois Bell improperly billed surcharge for cost of state message tax. Bell was required to pay a settlement.
- *Gottlieb v. City of South Euclid*, No. 83399, 2004 Ohio App. LEXIS 2409, (Ohio Court of Appeals, Cuyahoga County, Eighth District, May 27, 2004). Appellate court dismissed certification of a class in an action to recover a local Ohio license fee. There was no evidence that the class representatives paid the fee under protest. Further, the taxpayer failed to show that the members of the class, as restricted to those paying the fee under protest, were so numerous that joinder of all members was impracticable.
- *Heaven v. Rite Aid Corp.*, 2000 WL 33711049 (Pa. Comm. Pl. Oct. 27, 2000). Consumer class action the Rite Aid overcollected sales tax. Court held consumers must file statute and file individual claims for refund.
- *Hooks v. Maryland*, 289 A.2d 332 (Md. Supreme Court, 1972). Taxicab driver paid sales tax to lessor. Filed class action claiming illegal tax. Court dismissed the class action.
- *Ideal Steel Supply Corp. v. Joseph Anza*, 254 F.Supp.2d 464 (S.D.N.Y. 2003), *vacated*, 373 F.3d 251 (US 2nd Cir. July 2, 2004), reversed in part and remanded, (US Supreme Court, June 5, 2006). Ideal Steel Supply Corp. collected New York state and local sales tax. National Steel Supply, a competitor located a short distance away, did not collect the state and local sales tax. Ideal sued National under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"). Ideal pleaded that its lost sales were proximately caused by National's pattern of offering customers lower bottom line cost by means of the unlawful omission of state sales tax. Ideal alleged National concealed those omissions by means of mail and wire fraud. District court dismissed the case on the grounds of an inadequate pleading. The Second Circuit appellate court agreed with Ideal and reinstated the case. The US Supreme Court remanded to the appellate court.
- *Illinois ex rel. Beeler, Schad & Diamond v. Ritz Camera Centers, Inc.*, 878 N.E.2d 1152 (Ill. App. Ct. 2007). Between September 2001 and May 2003, Beller Schad (a Chicago-based law firm) filed sixty separate lawsuits under the Illinois FCA alleging retailers made sales to Illinois residents from out-of-state locations without collecting required Illinois sales tax. In September 2003 the Illinois Attorney General intervened and took primary responsibilities as the plaintiff. The appellate court ruled that liability cannot attach under the Illinois FCA when the claim is premised on a violation of an unsettled

area of law because, in such cases, the taxpayer cannot be said to have made a “knowingly” false claim.

- *International Game Technology, Inc. v. Second Judicial District of Nevada; State of Nevada et al. v. Eighth Judicial District of Nevada; State of Nevada ex rel Beeler, Schad, & Diamond, PC*, Nos. 43882 and 43953, <http://caselaw.findlaw.com/nv-supreme-court/1458351.html>, (Nevada Supreme Court, February 9, 2000). Two different plaintiff groups brought *qui tam* actions alleging evasion of Nevada sales taxes. Nevada Attorney General moved to dismiss those cases. Nevada Supreme Court sustained the dismissal.
- *Kawa v. Wakefern Food et al*, 24 NJ Tax 39, Docket No. 008717-2006, (New Jersey Tax Court, April 3, 2008). Court dismissed plaintiff class action alleging grocery stores overcharged sales tax on items purchased at discount prices. Consumers must file individual refund claims as required by statute.
- *Kean et al. v. Wal-mart Stores, Inc.*, Illinois Supreme Court Docket No. 107771 (opinion filed November 19, 2009), sustaining 2008 WL 4982118 (Ill. App. Ct. Nov. 21, 2008). Consumer class action alleging improperly collected sales tax on delivery charges for goods purchased from Wal-mart's website. Court held shipping charges are taxable.
- *Kutis Funeral Homes*, St. Louis County (Missouri) Circuit Court (2003). Plaintiff consumer class action sought to add as defendants all funeral homes that charged customers sales tax on vaults. The Missouri Department of Revenue was served with a subpoena seeking the identity of all parties that reported the sales tax on the sales of vaults.
- *Larrieu et al v. Wal-mart Stores et al*, No. 2003 CA 0600, 2004 WL 324962, *Larrieu et al v. Terrebone Parish et al*, No. 2003 CA 0943, (Louisiana Appeals Court, First Circuit, February 23, 2004). Plaintiff class action suit alleged that Wal-Mart and other retailers collected too much state and local sales tax on pre-paid telephone calling cards. Court dismissed the case and held the plaintiffs failed to exhaust their administrative remedies before filing this suit.
- *Lacey Nursing Center, Inc. et al. v. State of Washington, Department of Revenue*, No. 62079-2, 128 Wash.2d 40, 905 P.2d 338, (Washington Supreme Court, November 2, 1995). Supreme Court denied certification of a class of nursing homes suing for a partial business and occupation tax exemption for the sale or rental of real estate. Held that taxpayers must specifically identify themselves to apply for a tax refund.
- *Lawler v. Cablevision System Corp.*, 2007 N. Y. Slip Opinion 50580(U), (May 22, 2007). Consumer plaintiff class action claimed the taxes on Cablevision's online service were not adequately disclosed. The court held that it could be a deceptive practice and authorized the suit to proceed.
- *Lawrence Mall of New Haven, Inc. v City of West Haven*, No. CV030478088, CCH-STATE-CASE-TRL-CT, CT-TAXRPTR, ¶400-923, (Connecticut Superior Court, Judicial District of New Haven, January 20, 2004). Court certified a class action where class consisted of taxpayers who were delinquent in paying city taxes. City of West Haven charged a 15% collection fee in addition to the state-authorized 8% interest on delinquencies.
- *Levy et al v. OfficeMax, Inc. et al*, Cause No. 03-06-00391-CV, (Texas Court of Appeals, Third District, June 19, 2007). Appellate court upheld consumers' right to ask district court for an injunction compelling the retailers to assign to the consumers the right to pursue a sales tax refund with the Texas Comptroller.

- *Levy et al v. OfficeMax, Inc. et al*, Cause No. D-1-GN-02-001252, (Travis County, 53rd Judicial District). Plaintiff class action claims a refund for persons who paid sales tax on rebates. Plaintiff seeks declaratory judgment interpreting Texas Tax Code Sections pertaining to cash discounts and exemption from sales tax. Claims against Texas Comptroller were dismissed. Case remains pending against the retailers.
- *Loeffler et al. v. Target Corp. et al.*, 2007 WL 49406222 (Cal. Ct. App. December 12, 2007). Consumer class action alleging Target had improperly collected sales tax on hot drinks for "to go" or for "take-out". Case is on appeal.
- *McGuire v. Ameritech Cellular*, 731 N.E.2d 343, (Ill. App. Ct. 1st District, 2000). Class action claimed Ameritech collected Chicago city tax on calls that did not originate in the city. Plaintiffs wanted to litigate the legality of the tax, but brought their case as a breach of contract by Ameritech. Court ruled in favor of Ameritech.
- *Nevada ex. rel. McAndrews v. Intâ€™ Game Tech., Inc.*, No. CV03-01329 (Washoe County, 2d. Jud. Dist. 2003), a former employee of a Nevada gaming company filed a qui tam action against the company, claiming that it had avoided paying up to \$30 million in sales and use taxes since 1997. The former employee had alleged direct fraud on the grounds that the company knowingly accepted resale certificates from an unregistered company for purchases that the company knew were not for resale.
- *Nielsen v. Expedia, Inc. et al.*, No. 05-00365JCC (W. D. Wash., filed by removal March 7, 2005), Plaintiff consumer class action alleges Expedia engaged in deceptive trade practice in describing taxes and fees on hotel room reservations. Allege that Expedia collected taxes without disclosing the actual tax due and failed to remit such taxes to the appropriate taxing authority.
- *Parker v. Giant Eagle, Inc.*, 2002 WL 31168571, (Ohio App. 7th District, September 26, 2002). Plaintiff consumer class action alleged retailer improperly calculated sales tax on double coupons. Appellate court holds that action should be brought in Court of Claims rather than Court of Common Pleas. Appellate court held the Ohio Tax Commissioner rather than retailer was the proper defendant.
- *People ex. Rel. Empire State Ventures, LLC v. Sprint Nextel Corp.*, Index No. 103917-2011 (N.Y. Sup. Ct). On June 27, 2013 the trial court denied Sprint-Nextel Corporation's ("Sprint") motion to dismiss claims brought against it under the New York state False Claims Act and concluded that the complaint sufficiently alleged that Sprint had failed to both collect and pay more than \$100 million in state sales tax since July of 2005 in a bid to gain an advantage over competitors such as AT&T and Verizon Wireless by making its services less expensive.

Originally filed by whistleblower Empire State Ventures LLC in March 2011 under the qui tam provision of the statute, New York Attorney General Eric Schneiderman intervened in the case in April 2012 following an investigation. According to the superseding complaint, Sprint allegedly knowingly failed to collect and pay the state sales tax on approximately 25% of its revenue from flat-rate plans and then concealed its failure to do so despite the fact that New York imposes a sales tax on the full amount of any flat-rate charge for wireless service. In addition to misleading the government, the complaint alleges that Sprint's conduct misled millions of New York consumers who purchased the flat-rate plans by indicating in its contracts and on its website that it would

collect and pay all requisite sales tax. As a result, the complaint alleges that these customers entered into their contracts with Sprint under false pretenses. In accordance with the statutory provisions, the lawsuit seeks three times the amount of underpaid taxes plus penalties and the release of effected Sprint customers from their contracts with the company without early termination fees.

- *P. J.'s Concrete Pumping Service, Inc. v. Nextel West Corp.*, No. 2-02-1219, 2004 WL 171546, (Ill. Appeals Court, Second District, January 27, 2004, rehearing denied February 26, 2004). Appeals court certified a class-action lawsuit filed in Cook County against Nextel for a refund of local taxes collected by Nextel. Nextel billed local taxes based on zip code and incorrectly billed city utility and gross receipts tax to some customers outside the city limits. The class action implicated the tax ordinances of over 1,000 local governments and the laws of 17 states.
 - US Supreme Court, Docket No. 04-263, Petition for certiorari denied, November 1, 2004.
- *P. R. Marketing Group, Inc. v. GTE Florida and Department of Revenue*, Case No. 2D00-4809, 806 So.2d 597, (Florida Court of Appeals, Second District, February 1, 2002). Appellate court sustained trial court's summary judgment in favor of GTE and Department of Revenue. Appellate court recommended that Florida legislature clarify the statute.
 - *P. R. Marketing Group, Inc. v. GTE Florida and Department of Revenue*, Case No. 98-02561, (Florida Court of Appeals, Second District, August 20, 1999). Plaintiff consumer class action alleged that GTE and Department of Revenue's practice of using the bracket method of taxation for long distance telephone calls resulted in an overcharge of tax.
- *Ricci v. Dell Computer Corp.*, 2012 R.I. LEXIS 50 (R.I. Super Ct. 2012). Plaintiffs brought class action alleging that Dell violated the Rhode Island Deceptive Trade Practices Act (DTPA) by improperly and negligently collecting sales tax on optional service contracts and service and handling fees. Trial court allowed class action to proceed, ruled that sales tax should not have been collected on the optional service contracts and held that the improper collection of sales tax was not excluded from the DTPA. However, the court found there was no evidence Dell intentionally misled the consumers and that Dell had simply misinterpreted the tax law in a "gray area." The court refused to extend the DTPA to an unintentional error.
- *Ring v. Metropolitan St. Louis Sewer District*, Docket No. 80493, 969 S.W.2d 716, CCH-STATE-CASE-HIGH-CT, MO-TAXRPTR, ¶202-164, (Missouri Supreme Court en banc, May 26, 1998), Supreme Court allowed class action lawsuit by Missouri taxpayers who paid increased local wastewater fees that were subsequently held unconstitutional. They were not required to follow the statutory refund procedure. Taxpayers could enforce the provision under which the fee increase was held unconstitutional by either seeing an injunction to enjoin the illegal tax collection or timely filing suit for refund. Court cites the following case for the proposition that "Beatty III left open the question whether a class action is the proper procedure by which ... taxpayers ... could recover their overpayment."
 - *Beatty v. Metropolitan St. Louis Sewer District*, 914 S.W.2d 791 (Mo. en banc 1995), cites with approval RSMO Section 536.067(1), which permits class

actions, and MRCP Rule 52.08 (on Class Actions), and points out that plaintiffs had not asked for a class action and the trial court had not followed the rule to certify one, thus leaving the question open as noted above.

- *Sanchez v. City of Los Angeles*, No. B163744, 2004 WL 60766, 2004 Cal. App. Unpub. LEXIS 288, CCH-STATE-CASE-APP-CT, CA-TAXRPTR, ¶403-592, (California Court of Appeal, Second Appellate District, unpublished, January 14, 2004). Sprint PCS assessed the 10 percent Los Angeles utility user tax on the total amount of a customer's monthly telephone bill. AT&T Wireless and Verizon Wireless, in contrast, assessed the tax only on a \$20 "imputed fixed monthly access fee," and not on charges for airtime. Diana Sanchez, a Los Angeles resident, filed a class action against the city for a refund of the added tax she paid because Sprint used a higher taxable base than its competitors. She also sued AT&T Wireless and Verizon Wireless alleging unfair competition. District court dismissed her suit. Appellate court partially overturned and remanded the case back to the district court.
- *Sanchez v. Pasadena*, No. B180211, (California Court of Appeal, Second Appellate District, February 8, 2006). Plaintiff Diana Sanchez filed an amended class action regarding wireless taxes. The appellate court dismissed this amended case.
- *Stork et al v. BellSouth and Palm Beach County*, 847 So. 2d 1098, (District Court of Appeal of Florida, Fourth District, June 18, 2003). Plaintiffs brought a class action lawsuit against telecommunications provider and county alleging excessive collection of local public service taxes. Court held that the same administrative remedies apply to county as provided for municipalities. Court dismissed plaintiff's complaint for failure to follow administrative remedies.
- *U-Haul Company of Alabama, Inc. v. Johnson*, Supreme Court Docket No. 1021726, 2004 WL 1079804, (Alabama Supreme Court, 2004). Held that certification of class was improper because trial court failed to consider the company's voluntary payment defense.
- *Utility Reform Project v. Public Utility Commission of Oregon*, Marion County (Oregon) Circuit Court No. 03C21227, (order dated June 2, 2004). Plaintiff class action alleged that during Public Utility Commission rate setting proceedings Enron and Portland General Electric (PGE) presented deceptive reports of the amount of state and local taxes paid.